NARCOTICS LAW BULLETIN

88 BROAD STREET • BOSTON, MA. 02110

Published by Quinlan Publishing Co., Inc.

Regina L. Quinlan, J.D., Editor

JANUARY 1977 THROUGH DECEMBER 1977

AID & ABET

Volunteered after request for attorney Wood, June, p. 4 (8th c.)

Active participation

Trevino, Nov., p. 2 (5th c.)

Agent of buyer

Loder, May, p. 3 (Ga.)

Dismissal of charge against actual seller Snow, Feb., p. 3 (4th c.)

Driver - mere presence

Greeson, March, p. 5 (Ga.)

Vandiver, March, p. 7 (Colo.)

Lookout

Hamer, May, p. 1 (5th c.)

Lookout - knowledge

Martinez, Dec., p. 1 (5th c.)

ARREST

Attempted flight

Wood, June, p. 4 (8th c.)

Choking

Trevino, Oct., p. 7 (Cal.)

Mere Association Spriggs, April, p. 3 (Ill.)

Observations of transaction

Thomas, Aug., p. 5 (D.C.)

Patron of bar being searched

Mackelvery, March, p. 7 (Ore.)

Probable cause

Prince, Aug., p. 3 (6th c.)

Probable cause - discarding package

Hollman, May, p. 2 (8th c.) Probable cause - tip plus corroboration

Laing, Feb., p. 8 (4th c.)

Waddy, Jan., p. 3 (5th c.)

CHAIN OF CUSTODY

Insufficient evidence of Longshaw, July, p. 4 (Fla.)

Sufficient evidence of

Leeman, Oct., p. 5 (Ill.)

CONFESSION

Delay in presentment - suspect drunk

Bear Killer, Feb., p. 2 (8th c.)

Impeachment - coerced statements

Smith, Feb., p. 3 (9th c.)

While intoxicated

Scott, March, p. 7 (Ala.)

CONSPIRACY

Armed guard

Vandiver, March, p. 7 (Colo.)

Arranging sale by phone

Rodriguez, June, p. 7 (9th c.)

Co-conspirator statement - time

Graham, July, p. 8 (8th c.)

Independent evidence of

Collins, Aug., p. 8 (8th c.)

Insufficient evidence of

Palacios, Oct., p. 2 (5th c.)

Stroupe, Feb., p. 4 (4th c.)

Knowing association with-

Hudson, April, p. 8 (Pa.)

Knowing participation

Blackshire, Jan., p. 3 (4th c.)

Knowledge

Jones, July, p. 6 (8th c.)

Knowledge - scope of conspiracy

Magnano, July, p. 1 (2d c.)

Mere presence insufficient to prove

participation

Salinas, Dec., p. 2 (5th c.)

Conspiracy - Cont'd

Other conspirators not known by defendant Leong, Jan., p. 5 (2d c.)

Overt act - telephone conversations Burts, Jan., p. 2 (6th c.)

Presence during negotiations and sale Harlin, Jan., p. 4 (9th c.)

Separate conspiracies

Ingman, June, p. 2 (9th c.)

Single conspiracy

Magnano, July, p. 1 (2d c.)

Single continuing operation

Ashley, Dec., p. 1 (5th c.) Single continuing transaction

Brannon, Dec., p. 7 (N.Y.) Statements after termination

Hagnes, Nov., p. 6 (5th c.)

Statements of co-conspirators Jones, May, p. 1 (4th c.)

Termination

Panebianco, May, p. 7 (2d c.)

Withdrawal

Panebianco, May, p. 7 (2d c.)

DEFINITIONS

Cannabis - mature stalks

Purifoy, Aug., p. 7 (Fla.) Cannabis - parts - resin Samson, June, p. 6 (Me.)

Cocaine

Hall, Aug., p. 4 (9th c.)

Curtilage - open fields

Frazier, May, p. 8 (Ga.)

Delivery

Wright, Oct., p. 4 (Mich.)

Delivery - includes attempt Dunkum, March, p. 6 (Ga.)

Delivery - includes prescribing

Alford, Aug., p. 4 (Mich.)

Delivery - includes prescription by physician Comins, June, p. 7 (Mass.)

Detention

King, Nov., p. 7 (Cal.)

Effect - locked luggage

Chadwick, Aug., p. 1 (U.S.C.)

Hashish

Randall, April, p. 6 (Mo.)

LSD - forms of

Philpot, June, p. 1 (Me.)

DISTRIBUTION

Active participation in

Lubrano, Jan., p. 1 (2d c.) Age of distributees

Moore, May, p. 2 (D.C.)

Attempt

Dunkum, March, p. 6 (Ga.)

By physician - prescription

Tighe, Aug., p. 4 (3rd c.)

Co-purchaser

Houston, May, p. 5 (Mo.)

Delivery to agent

Miller, March, p. 3 (Texas)

Exchange - no profit

Mitzger, Oct., p. 4 (N.J.)

Indictment - failure to allege amount of heroin

Estell, Jan., p. 7 (10th c.)

Knowledge - nature of substance Shiffbauer, Aug., p. 3 (Neb.)

Pharmacy employee

Goldfine, Jan., p. 4 (9th c.)

Physician prescribing drugs Comins, June, p. 7 (Mass.)

Physicians

Vaccaro, March, p. 2 (N.J.)

Presence ouring transaction

Dickson, April, p. 1 (Minn.)

Sale - a specific act

Lankford, May, p. 3 (N.C.)

Sale of abandoned drugs

Sundholm, Dec., p. 4 (N.Y.)

DISCOVERY

Chemist's rough notes

Waldron, July, p. 6 (D.C.)

DOMINION

Apartment guest

Maurer, March, p. 4 (Pa.)

Need not be exclusive

Rosa, April, p. 1 (Mass.)

DOUBLE JEOPARDY

Conspiracy and continuing criminal enterprise

Jeffers, Aug., p. 1 (U.S.S.C.)

DRUG REHABILITATION

Not available for distributor

Venner, June, p. 4 (Md.)

Drug Rehabilitation - Cont'd

Prior exposure to Barrow, March, p. 3 (4th c.)

DUE PROCESS

Government infiltration Smith, Feb., p. 3 (9th c.)

ENTRAPMENT

Burden of proof - inducement Swiderski, Jan., p. 7 (2d c.)

Burden of proof - predisposition Swiderski, Jan., p. 7 (2d c.)

Established - seller police agent Cooper, June, p. 2 (Iowa)

Guilty plea - waiver of defense Summers, March, p. 4 (5th c.)

Instruction on - refusal to give Gonzales, Feb., p. 6 (9th c.)

Multiple charges - dismissal of one - effect on others

Smail, March, p. 8 (Fla.)

Predisposition
Duff, Aug., p. 3 (7th c.)

Predisposition to commit crime Jackson, Jan., p. 6 (6th c.)

Refusal to instruct - error Greenfield, Nov., p. 6 (5th c.)

ENTRY

Auto - unlawful Threat, Aug., p. 3 (Okia.) Common hallways

Howard, April, p. 3 (Cal.) Consent invalid

McGovern, July, p. 5 (Wisc.) Emergency

Frazier, Oct., p. 6 (Cal.)

Medical emergency - scope of Brand, Oct., p. 1 (5th c.)

Porch - growing marijuana Detlefson, March, p. 5 (Fla.)

Warrantless - to arrest Monteill, Jan., p. 2 (2d c.)

EVIDENCE

Analysis - sample of lot - sufficient Dixon, June, p. 5 (Ind.) Best evidence - conversations and tapes thereof Gonzales, Feb., p. 6 (9th c.) Evidence - Cont'd

Conspiracy - personal use by defendant Blackshire, Jan., p. 3 (4th c.)

Co-conspirator statement - admissibility Stroupe, Feb., p. 4 (4th c.)

Defendant called a "junkie" Rivera, June, p. 1 (Pa.)

Excreted balloons

Venner, June, p. 4 (Md.)

Exculpatory hearsay - excluded

Bagley, Jan., p. 1 (5th c.) Independent untainted source

Jones, May, p. 1 (4th c.)

Informant's out of court statement Moore, Feb., p. 1 (U.S.S.C.)

Instructions to informant

Lubrano, Jan., p. 1 (2d c.)

Large sum of cash Bombard, June, p. 3 (N.Y.)

Magnano, July, p. 1 (2d c.)

Other crimes - after arrest Hames, Nov., p. 7 (D.C.)

Other crimes - motive

Wolan, Sept., p. 4 (10th c.) Ownership by another

Rosa, April, p. 1 (Mass.) Personal and bank records

Armstrong, July, p. 4 (Tenn.)

Personal papers

McGuinn, Sept., p. 7 (S.C.) Possession by another

Rosa, Dec., p. 7 (Mass.)

Presence of morphine in blood Yanez, April, p. 7 (N.M.)

Prior crimes - intent

Jardan, Aug., p. 2 (8th c.)

Prior drug arrests - intent O'Keefe, April, p. 1 (N.Y.)

Prior drug transactions
Sanderson, Oct., p. 1 (Ill.)

Prior inconsistent statement Palacios, Oct., p. 2 (5th c.)

Quantities of drugs - scope of conspiracy

Magnano, July, p. 1 (2d c.) Quantity capable of being cut

Abrego, June, p. 5 (Mich.)

Residue on pans

Partani, May, p. 7 (Ga.)

Evidence - Cont'd

Sale by defendant's wife Evans, June, p. 5 (Iowa)

Statement of co-conspirator after arrest Blackshire, Jan., p. 3 (4th c.)

Statement of co-defendant at arrest -

defendant's silence

Flechia, Feb., p. 7 (2d c.)

Statement to agent during entrapment Smail, March, p. 8 (Fla.)

Street value and effect of drug - prejudicial Green, July, p. 8 (6th c.)

Street value - motive

Nolan, Sept., p. 4 (10th c.)

Syringe - prejudicial

Schmidt, Oct., p. 5 (Wisc.)

Value of pills

Brady, July, p. 5 (Ark.)

EXEMPTIONS

Physicians - scope Alford, Aug., p. 4 (Mich.)

FRISK

Squeezing bag
Johnson, July, p. 2 (D.C.)
Unjustified
Holder, July, p. 5 (Ga.)

FORFEITURE

Auto - contraband not found in One 1974 Cadillac, Aug., p. 2 (2d c.) Auto used to transport - drugs for personal

One 1975 Mercury, June, p. 3 (N.Y.) Bond requirement unconstitutional Wiren, May, p. 4 (D.C.) Owners noninvolvement One 1973 Jaguar, Nov., p. 2 (N.Y.)

IMMUNITY

Officers supplying informant with drugs Backus, Nov., p. 3 (Cal.)

INDICTMENT

Distribution to minors Moore, May, p. 2 (D.C.) Variance Oglesby, Sept., p. 6 (Ga.)

INFORMANTS

Appearance before issuing magistrate Brown, March, p. 8 (N.Y.)

Informants Cont'd

Citizen - brother of OD victim
Isenberg, Dec., p. 3 (III.)
Declaration against penal interest
Wood, Sept., p. 4 (9th c.)
First time - investigation justified
Lawson, May, p. 3 (Va.)
Government agents

INSTRUCTIONS

Chemical equivalent of cocaine Hall, Aug., p. 2 (9th c.)

Emery, March, p. 1 (1st c.)

INTENT TO DISTRIBUTE

Agent of buyer
McLeod, Nov., p. 8 (N.Y.)
Amount - insufficient
Carwell, April, p. 5 (Fla.)
Fact of sale

Lankford, May, p. 3 (N.C.) Heroin on person present at sale

Dixon, July, p. 3 (Ark.)
Instruction - lesser included offense
Brischetto, March, p. 2 (8th c.)
Insufficient evidence - visitor to premises

Cain, June, p. 8 (Md.)

Joint purchase for joint use

Swiderski, July, p. 7 (2d c.)

Mailed package - insufficient Sterling, March, p. 3 (Pa.)

Other crimes
Jardan, Aug., p. 2 (8th c.)
Quantity

Abrego, June, p. 5 (Mich.) Quantity plus dilutant

Ramirez, Sept., p. 6 (9th c.) Quantity plus observations Thomas, Sept., p. 5 (D.C.)

Sales by wife
Evans, June, p. 5 (Iowa)
Specific intent
Elzie, Sept., p. 7 (La.)

JOINT VENTURE

Sufficient evidence of . Creamer, Nov., p. 5 (7th c.)

JURORS

Examination of - ability to speak Spanish Gonzales, Feb., p. 6 (9th c.)

Jurors - Cont'd

Examination of - bias and/or experience with drugs

Rojas, Feb., p. 5 (5th c.)

MANUFACTURE

Chemicals alone - insufficient Roby, March, p. 4 (Vt.)

OFFENSES

Attempt - mistake concerning nature of substance

Rosencrants, Oct., p. 8 (N.Y.) Attempt not included in statute Gomez, May, p. 8 (N.Y.)

Delivery of substance represented to be controlled

Shiffbauer, Aug., p. 3 (Neb.) Forged prescription

Posey, July, p. 1 (Texas)

Substance represented to be controlled Kent, Nov., p. 8 (Ill.)

Sufficient evidence of Mayotte, July, p. 2 (Ind.)

Under the influence - does not include withdrawal Gutierrez, Nov., p. 4 (Cal.)

PAROLE

Revocation Smallwood, Feb., p. 7 (8th c.)

PLAIN VIEW

Checking for others on premises
Clark, Nov., p. 3 (Ind.)
Drugs falling from arrestee's pocket
Szczepanik, April, p. 8 (N.Y.)

Entry to arrest Monteill, Jan., p. 2 (2d c.)

Flashlight Effler, Feb., p. 2 (6th c.)

Elbertson, June, p. 3 (Fla.) Illegal entry

McGovern, July, p. 5 (Wisc.) Investigation

May, Dec., p. 7 (Ind.)
Open field

Frazier, May, p. 8 (Ga.) State's version incredible Warren, April, p. 2 (Ill.)

Taking serial numbers improper Wilson, June, p. 8 (Md.) Plain View - Cont'd
Tinfoil packet
Ridgeway, Oct., p. 7 (Mich.)
Transaction in park
Carter, Dec., p. 4 (La.)

POSSESSION

Accessibility to others Ellis, Oct., p. 8 (Fla.)

A continuing crime Lankford, May, p. 3 (N.C.)

Amount - consistent with personal use Carwell, April, p. 5 (Fla.)

Amount - residue Partani, May, p. 7 (Ga.)

Amphetamines - improper to admit syringe Schmidt, Oct., p. 5 (Wisc.)

Bag in alley Lawrence, Oct., p. 6 (Ill.)

Driver of auto Rogers, June, p. 6 (N.C.)

Driver of car - insufficient Presswood, July, p. 7 (Texas)

Equal access - growing plants Heaton, April, p. 6 (Ga.)

Guest - others with equal access Maurer, March, p. 4 (Pa.) Joint - companion

Sheppard, March, p. 5 (Ga.) Joint purchase

Swiderski, July, p. 7 (2d c.) Knowledge - ash residue

Kabat, Aug., p. 4 (Wisc.) Knowledge - driver - attempt to bribe Pagliara, Dec., p. 2 (III.)

Knowledge - driver of car - odor Cook, May, p. 4 (Okla.)

Knowledge - growing plants Heaton, April, p. 6 (Ga.)

Knowledge - insufficient evidence of Warden, April, p. 5 (Idaho)

Knowledge - mere proximity to drugs Weems, May, p. 4 (N.C.)

Instructions - presence

Rojas, Feb., p. 5 (5th c.)

Mailed package Sterling, March, p. 3 (Pa.)

Mere presence Moore, Feb., p. 1 (U.S.S.C.) Multiple offenses unlawful

Randall, April, p. 6 (Mo.)

Possession - Cont'd

Occupants of auto

Browne, May, p. 6 (Texas)

Ownership by another

Rosa, April, p. 1 (Mass.)

Passenger in car - insufficient evidence

Brown, May, p. 7 (S.C.)

Passenger in car - mere proximity

Huth, July, p. 3 (Ill.)

Presence plus additional factors

Stewart, April, p. 7 (Mo.)

Possession prior to use

Yanez, April, p. 7 (N.M.)

Residency

McGuinn, Sept., p. 7 (S.C.)

Right to immediate possession - ownership

Biggs, May, p. 6 (Wash.)

Sublessor of apartment

Finney, April, p. 6 (N.C.)

Unclaimed suitcase Catano, Sept., p. 1 (5th c.)

Usable amount - sharing pipe

Richardson, Aug., p. 6 (D.C.)

Within curtilage

Walker, June, p. 6 (Ga.)

PRIVACY

Boxes in open field

Freie, Aug., p. 3 (9th c.)

Hallways and common areas Howard, April, p. 3 (Cal.)

Porch and yard

Detlefson, March, p. 5 (Fla.)

Not violated by surveillance

Johnson, July, p. 2 (D.C.)

PURCHASE AGENT THEORY

Agency - not a defense

O'Keefe, April, p. 1 (N.Y.)

Consumating sale for seller

Sundholm, Dec., p. 4 (N.Y.)

Disproves intent to sell

McLeod, Nov., p. 8 (N.Y.)

Excluded by statute

Snow, Feb., p. 3 (4th c.)

No defense

Loder, May, p. 3 (Ga.)

SEARCH

Abandoned marijuana Smith, March, p. 6 (Fla.)

Search - Cont'd

Administrative - consent

Pugh, Jan., p. 5 (Mich.)

Auto - furtive actions Lawson, May, p. 3 (Va.)

Auto - incident to arrest

Dixon, Dec., p. 8 (9th c.)

Auto - not justified by odor of marijuana

Hilber, April, p. 2 (Mich.)

Auto - trunk - valid

Perey, May, p. 5 (Ark.)

Auto used to make deliveries Panebianco, May, p. 7 (2d c.)

Baggage - transporting currency - illegal

Gomez, May, p. 8 (N.Y.)

Border - avoiding checkpoint

Macias, Aug., p. 5 (5th c.)

Border - permanent checkpoint Torres, Feb., p. 8 (5th c.)

Boxes in open field

Freie, Aug., p. 3 (9th c.)

By airline employee - government search

Fannon, Oct., p. 3 (9th c.)

Choking

Hernandez, Aug., p. 8 (Texas)

Choking - unreasonable per se

Trevino, Oct., p. 7 (Cal.)
Consent - common authority

Cain, April, p. 5 (Mass.)

Consent while in custody - va. d

Kissner, July, p. 6 (S.D.)

Foreign mail

Emery, March, p. 1 (1st c.)

Guest in apartment

Spriggs, April, p. 3 (III.)

House - armed undercover agents -

no warrant

Duhaime, June, p. 1 (Conn.)

Induced vomiting

Rodriquez, Oct., p. 4 (Cal.)

Locked luggage

Chadwick, Aug., p. 1 (U.S.S.C.)

Military reservation

Mathews, Nov., p. 1 (Okla.)

Odor of marijuana

Dixon, Sept., p. 8 (Fla.)

Person - odor of marijuana

Tardiff, July, p. 4 (Texas)

Probable cause - odor of marijuana

Torres, Feb., p. 8 (5th c.)

Search - Cont'd

Probable cause - tip plus corroboration Laing, Feb., p. 8 (4th c.)

Rectal

Magness, Dec., p. 6 (Ariz.)

Requesting removal of coat

Gutierrez, Nov., p. 4 (Cal.)

Second car in area

Villagrana, Dec., p. 5 (Ariz.)

Tinfoil packet - officers experience Ridgeway, Oct., p. 7 (Mich.)

Wallet - delayed

Shepherd, Aug., p. 5 (Fla.)

Warrantless - drug party

Sperry, Jan., p. 8 (Ohio)

Warrant - execution - patrons of bar Mackelvery, March, p. 7 (Ore.)

SEIZURE

Auto used for deliveries Panebianco, May, p. 7 (2d c.) Excreted balloons - hospital Venner, June, p. 4 (Md.)

SENTENCE

Co-defendants - different - error Javins, Dec., p. 8 (Neb.) Considering evidence from other trial -

Winters, April, p. 3 (Pa.)

Conspiracy and substantive offense Ingman, June, p. 2 (9th c.)

Drug treatment program

Barrow, March, p. 3 (4th c.) Enhanced punishment - physician

Moore, May, p. 2 (D.C.)

Multiple punishments

Jeffers, Aug., p. 1 (U.S.S.C.)

Testimony - opportunity to rebut

Ashley, Dec., p. 1 (5th c.)

Use of crior convictions

Campbell, Jan., p. 6 (5th c.)

STATUTES

Failure to publish list of controlled substances

Urdiales, Dec., p. 8 (5th c.)

Marijuana as dependency-producing drug Rao, July, p. 6 (N.J.)

Whether drug dangerous - question of law McKetta, June, p. 4 (Pa.)

STOP

Auto - traffic - pretext to search

Hollman, May, p. 2 (8th c.)

Exceeding scope

Chamblis, Aug., p. 7 (Mich.)

Experience of officer

Thompson, Aug., p. 2 (D.C.)

Flight

White, April, p. 8 (N.Y.)

Stolen car check

Singleton, Sept., p. 7 (N.Y.)

To inspect for aliens

Bistrom, March, p. 2 (5th c.)

Traffic - passenger not immune from

investigation

Tardiff, July, p. 4 (Texas)

Traffic - pretext to arrest

Edwards, Oct., p. 5 (Mich.)

VERDICTS

Consistency not required Hagnes, Nov., p. 6 (5th c.)

WARRANT

Administrative warrants

Goldfine, Jan., p. 4 (9th c.)

Affidavit - negligent misstatement

Astroff, Nov., p. 2 (5th c.)

Affidavit - probable cause

Armstrong, Sept., p. 8 (N.C.)

Parker, Nov., p. 5 (Ga.)

Affidavit - stale information

McDonald, Nov., p. 4 (Ga.)

Affidavit sufficient

Gray, April, p. 4 (Cal.)

Affidavit - time of observations

Blaurock, April, p. 4 (N.J.)

After termination of conspiracy

Magnano, July, p. 1 (2d·c.)

Anticipatory

Mien, Sept., p. 5 (N.J.)

Application - oral unsworn testimony of

informant

Brown, March, p. 8 (N.Y.)

Based on prior illegal search

Armedo, Aug., p. 6 (2d c.)

Execution - bank and personal records

Armstrong, July, p. 4 (Tenn.)

Execution - bar patron

Brown, April, p. 2 (Fla.)

Warrant - Cont'd

Execution - disconnecting toilet pipe Anaya, March, p. 6 (N.M.)

Execution - jacket on premises Biggs, May, p. 6 (Wash.)

Execution - taking serial numbers - illegal Wilson, June, p. 8 (Md.)

Information from Ohio police - illegal Johnson, May, p. 5 (Fla.) Probable cause - presence of items

Frye, April, p. 4 (Pa.)

Wallet - effect Shepherd, Aug., p. 5 (Fla.)

WIRETAP

Informant consent to taping Jones, July, p. 6 (8th c.)

WITNESSES

Expert - cannot characterize transaction Hernandez, Sept., p. 6 (Cal.)

Expert - customary use of heroin Reliford, July, p. 3 (La.)

Expert - goods used to manufacture Green, July, p. 8 (6th c.)

Expert - undercover agent not qualified Longshaw, July, p. 4 (Fla.)

Identification by non-expert

Park, Dec., p. 3 (Ill.)

Impeachment - conviction with appeal pending

Collins, Aug., p. 8 (8th c.)

Unavailable - use of grand jury testimony Carlson, Sept., p. 2 (8th c.)

